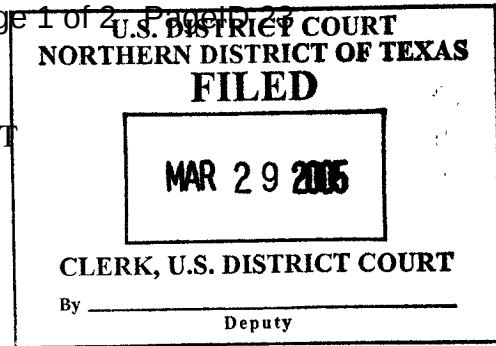


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SANFORD PAYTON

Plaintiff,

VS.

THE WAYBACK HOUSE,
ET AL.

Defendants.

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NO. 3-04-CV-2648-D

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

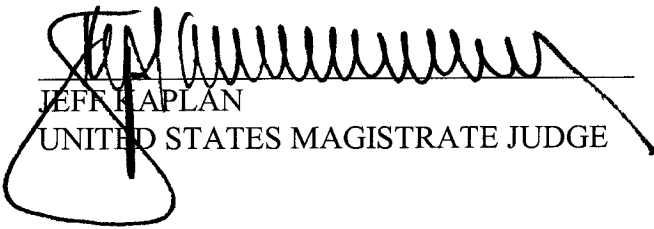
This is a *pro se* civil rights action brought by Plaintiff Sanford Payton, a Texas parolee, against The Wayback House and its executive director to recover \$500 allegedly taken from him while residing in the facility. By letter dated March 7, 2005, plaintiff advised the court that all his money has been returned. The court construes this letter as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1).

Rule 41(a)(1) provides that "an action may be dismissed by the plaintiff . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . ." FED R. CIV. P. 41(a)(1). This action was filed on December 14, 2004. Defendants have not been served with process or entered an appearance. Therefore, plaintiff should be permitted to dismiss his complaint.

RECOMMENDATION

Plaintiff's motion to dismiss should be granted and this action should be dismissed without prejudice.

DATED: March 29, 2005.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE